

AFFILIATION AGREEMENT

THIS AFFILIATION AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 1999, by and among HEALTH MIDWEST, a Missouri public benefit corporation ("HM"), HEALTH MIDWEST – JOHNSON COUNTY, INC., a Kansas not-for-profit, nonstock corporation ("HMJC"), OVERLAND PARK REGIONAL MEDICAL CENTER, INC., a Kansas not-for-profit, nonstock corporation ("OPRMC") and MENORAH MEDICAL CENTER, INC., a Kansas not-for-profit, nonstock corporation ("MMC").

WITNESSETH:

WHEREAS, Health Midwest is a Missouri public benefit corporation which is exempt from federal income taxation under §501(a) of the Internal Revenue Code ("Code") by virtue of being an organization described under §501(c)(3) of the Code and serves as the parent company for a comprehensive integrated system of organizations dedicated to the delivery of health care services to the Kansas City metropolitan area and the surrounding region, and which includes general acute care hospitals and related services, mental health services, physician clinics and office facilities, outreach clinical and support services, outpatient care and wellness activities, occupational health clinics, and other health care related activities;

WHEREAS, HM is the sole member of HMJC and HMJC is the sole member of OPRMC and MMC, both of which operate acute care hospitals in Overland Park, Johnson County, Kansas; and

WHEREAS, the parties desire to operate MMC and OPRMC within the HM system as efficiently as possible consistent with system goals and objectives and desire to establish the rights, responsibilities and allocation of authority among HM, HMJC, OPRMC and MMC with respect to the operation and management of HMJC, OPRMC and MMC;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the parties agree as follows:

AGREEMENT:

1. Governance.

a. HMJC. HMJC will adopt, and will maintain in force for the duration of this Agreement, articles and bylaws which establish the following:

i. HM will be the sole member of HMJC under the Kansas General Corporation Code, Section 17-6001 *et seq.* of the Kansas Statutes Annotated, with all the rights associated with being a member under such law including, without

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ii. MMC's board will consist of no fewer than 14 and no more than 30 persons, all of whom will be elected by HMJC. The President of MMC will serve ex officio with vote. The President and President-Elect of the medical staff of MMC, the Chairman of the MMC Foundation, and the President of the MMC Auxiliary will serve ex officio without vote. At least three of the MMC directors will also be directors serving on the board of HM.

iii. OPRMC's board will consist of at least five persons, all of whom will be elected by HMJC. The President of OPRMC will serve ex officio with vote. The President and President-Elect of the medical staff of OPRMC will serve ex officio without vote.

iv. Directors will serve staggered three-year terms with approximately 1/3 of the terms expiring each year. Directors may serve up to five consecutive three-year terms. No persons may be elected a director if they have reached the age of 70 at the time of election, but any directors who become 70 during their term may complete the term.

v. HMJC will be able to remove any director of OPRMC with or without cause. HMJC will be able to remove any director of MMC if the director is not acting in the best interests of MMC.

vi. MMC and OPRMC will adopt the HM conflicts of interest policy.

vii. Upon dissolution of MMC or OPRMC, all of the remaining assets after satisfaction of outstanding debts will be distributed to HMJC; provided that it qualifies as an organization exempt from federal income tax under Code §501(c)(3), or any successor provision thereto. If HMJC does not then so qualify, distribution of the net assets of HMJC will be made to such §501(c)(3) tax exempt organization(s) as the Board of the dissolving corporation may designate by resolution, subject to approval of such resolution by HMJC as sole member.

viii. The articles of incorporation and the bylaws of MMC and OPRMC may contain other legally appropriate provisions as mutually agreed by the respective corporation and HMJC, provided that such provisions do not conflict with the foregoing.

2. **Allocation of Management Rights, Responsibilities and Authority.**

a. **HM Management Rights, Responsibilities and Authority.** HM will have the following management rights, responsibilities and authority over HMJC, MMC and OPRMC:

i. HM will have general budgeting and financial control over HMJC, MMC and OPRMC, including the right to approve individual and integrated capital and operating budgets, the incurrence of debt, capital acquisition strategies,

and unbudgeted expenditures or expenditures that exceed the levels of approval authority.

ii. HM will approve all sales, conveyances or other dispositions of property by HMJC, MMC and OPRMC.

iii. HM will establish the levels of approval authority for the boards, committees, and officers of HMJC, MMC and OPRMC which will limit the spending authority of such boards, committees, and officers in following areas, without limitation: creation of new officer positions, salary changes for officer positions, budgeted and unbudgeted capital expenditures, and budgeted and unbudgeted consulting and legal fees.

iv. HM will approve individual and integrated strategic business plans.

v. HM will provide overall direction and coordination of the managed care contracting activities and will have the ability to enter managed care contracts that bind HMJC, MMC and OPRMC, including managed care contracts that include other HM system entities.

vi. HM will provide general management and administration services including, without limitation, marketing, strategic planning, financial, accounting, budgeting, organizational, personnel, purchasing, financing, public relations, risk management, insurance programming and information services.

vii. HM will provide access to financing and capital markets.

viii. HM will provide overall direction and coordination of physician recruitment and retention activities.

ix. HM will be the ultimate arbiter of any dispute among HMJC, MMC and/or OPRMC. HM will be the ultimate arbiter for any disagreements regarding the allocation of rights, responsibilities and authority among HM, HMJC, MMC and OPRMC, regardless of whether such rights, responsibilities and authority are specifically addressed in this Agreement. HM will be the ultimate arbiter for any disagreements arising under this Agreement.

b. **HMJC Management Rights, Responsibilities and Authority.** HMJC will have the following management rights, responsibilities and authority over MMC and OPRMC:

i. HMJC will control service configuration between MMC and OPRMC by coordinating existing programs and services; shifting, transferring,

adding, and/or modifying the programs and services; and reducing or eliminating existing programs and services.

ii. HMJC will identify and implement opportunities and plans for sharing of resources among MMC and OPRMC (for example, space, equipment, and personnel).

iii. HMJC will monitor compliance with directives concerning service configuration and resource sharing.

iv. HMJC will approve the appointment of all senior officers and the performance of such senior officers will be subject to review and evaluation by HMJC.

v. HMJC will coordinate and oversee the following activities carried on individually by MMC and OPRMC in order to assist them in achieving their charitable and exempt purposes through a unified operating philosophy:

- (1) Quality of care;
- (2) Regulatory compliance;
- (3) Accreditation and licensing; and
- (4) Medical staff liaisons and relationships.

c. **MMC and OPRMC Management Rights, Responsibilities and Authority.** Without interfering with the management rights, responsibilities and authority allocated to HM and HMJC above, MMC and OPRMC will each have the following management rights, responsibilities and authority over their respective operations:

i. MMC and OPRMC will oversee general day-to-day management of facility operations.

ii. MMC and OPRMC will define their respective mission, vision and values consistent with the HM system mission, vision and values.

iii. MMC and OPRMC will recommend their respective strategic business plans for approval by HMJC and HM as part of the HM system integrated strategic business plan.

iv. MMC and OPRMC will recommend individual operating and capital budgets for approval by HMJC and HM as part of the HM system integrated operating and capital budget.

v. MMC and OPRMC will approve transactions and expenditures within their respective budgets and levels of approval authority established by HM and recommend to the HMJC and HM boards for their approval transactions and expenditures which exceed the respective budgets or levels of approval authority.

vi. MMC and OPRMC will oversee general quality assurance and utilization review issues, including general responsibility for quality of care within their respective facilities, and review and action upon reports of regulatory and accrediting agencies.

vii. MMC and OPRMC will oversee credentialing, recredentialing and disciplining of their respective medical and allied health professional staffs.

viii. MMC and OPRMC will establish the fees and prices charged at their respective facilities, subject to any managed care contracting by HM.

ix. MMC and OPRMC will determine and resolve religious matters and ethical issues relating to the services offered at their respective facilities.

x. MMC and OPRMC will exercise control over internal divisions and subsidiaries, for example, auxiliaries and foundations.

3. **Medical Staffs.** The medical staffs of MMC and OPRMC shall remain completely separate, internally autonomous, self-governing medical staffs responsible only to their respective boards of directors in accordance with their respective medical staff bylaws and applicable Kansas law. The medical staffs shall have no direct organizational or official interrelationship with any of the other hospitals within the HM System. The parties recognize and mutually acknowledge that MMC and OPRMC shall continue to work independently with their respective medical staffs and medical staff organizations, including all hospital based and other contract physicians, as in the past in order to foster effective, efficient, high quality local patient care.

4. **Auxiliaries.** The MMC and OPRMC auxiliaries shall remain responsible solely to their respective boards of directors, and shall remain completely separate and apart from any other hospital auxiliary within the Health Midwest System and shall have no direct organizational or official interrelationship with the auxiliary of any other hospital. The parties mutually acknowledge that MMC and OPRMC shall continue to work independently with their respective Auxiliary as in the past to further broad-based community support, for the delivery of high quality patient care in the Johnson County service area, and to further their respective missions.

5. **Miscellaneous.** This Agreement constitutes the entire agreement of the parties and may not be amended or terminated without the written consent of all the parties. The headings appearing in this Agreement have been inserted solely for the convenience of the parties and shall be of no force or effect in the construction of the provisions of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns. No part to this Agreement may assign its rights or delegate its duties to any other person or entity without the prior written consent of all the parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon any other person other than the parties hereto any rights or remedies under or by reason of this Agreement. This Agreement shall be construed under the laws of the State of Missouri.

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**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION
WHICH MAY BE ENFORCED BY THE PARTIES.**

HEALTH MIDWEST

By: _____

Name: _____

Title: _____

**HEALTH MIDWEST-JOHNSON
COUNTY, INC.**

By: _____

Name: _____

Title: _____

MENORAH MEDICAL CENTER, INC.

By: _____

Name: _____

Title: _____

**OVERLAND PARK REGIONAL
MEDICAL CENTER, INC.**

By: _____

Name: _____

Title: _____